

### **REMARKS**

This Reply is responsive to the final Office Action<sup>1</sup> dated June 7, 2010 and to the Advisory Action dated August 19, 2010 and is the submission under an RCE. Claims 1, 3, 5-10, 13-18, 22-32 and 34-36 were presented for examination and were rejected. Claim 35 is canceled without prejudice or disclaimer. Claims 2, 4, 11, 12, 19-21, and 33 were previously canceled. Claims 1, 10, 18, 28 and 34 are amended. New claims 37-55 are added. No new matter is added; support for the claim amendments and the new claims is found in the application as filed; see at least paragraphs [0029] and [0039] and Figs. 4, 6 and 8. Claims 1, 10, 18, 28, 34, 37, 44, 51-52 and 55 are independent claims. Claims 1, 3, 5-10, 13-18, 22-32, 34, 36 and 37-55 are pending.

#### **The Rejections:**

Claims 1, 3, 5, 9, 28, 30-32, and 35 are rejected under 35 U.S.C. §103(a) as being un-patentable over Farris et al., U.S. Patent No. 5,751,789 (referred to hereinafter as "Farris") in view of Gerszberg et al., U.S. Patent No. 6,714,534 (referred to hereinafter as "Gerszberg").

Claim 6 is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in views of Gerszberg and well known Prior Art (MPEP 2144.05).

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<sup>1</sup> The Office Action may contain a number of statements characterizing the cited references and/or the claims which Applicant may not expressly identify herein. Regardless of whether or not any such statement is identified herein, Applicant does not automatically subscribe to, or acquiesce in, any such statement. Further, silence with regard to rejection of a dependent claim, when such claim depends, directly or indirectly, from an independent claim which Applicant deems allowable for reasons provided herein, is not acquiescence to such rejection of that dependent claim, but is recognition by Applicant that such previously lodged rejection is moot based on remarks and/or amendments presented herein relative to that independent claim.

Claim 7 is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in view of Gerszberg, and Ehreth U.S. Patent No. 6,246,750 B1 (referred to hereinafter as "Ehreth").

Claim 8 is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in views of Gerszberg and McKenna et al. U.S. Patent No. 6,829,486 B2 (referred to hereinafter as "McKenna").

Claims 10, 17, 18 and 23-26 are rejected under 35 U.S.C. §103(a) as being un-patentable over Cardina et al., U.S. 2004/0214569 A1 (referred to hereinafter as "Cardina") in view of Gerszberg.

Claims 14-16 are rejected under 35 U.S.C. §103(a) as being un-patentable over Cardina in views of Gerszberg and Sawada, U.S. 2005/0148315 A1 (referred to hereinafter as "Sawada").

Claim 27 is rejected under 35 U.S.C. §103(a) as being un-patentable over Cardina in views of Gerszberg and McKenna.

Claim 29 is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in views of Gerszberg and Patron et al., (U.S. 2005/0063333 A1) (referred to hereinafter as "Patron").

Claims 13 and 22 are rejected under 35 U.S.C. §103(a) as being un-patentable over Cardina in views of Gerszberg and further in view of well known prior art (MPEP 2144.05).

Claim 34 is rejected under 35 U.S.C. §103(a) as being un-patentable over Knight in view of Gerszberg.

Claim 36 is rejected under 35 U.S.C. §103(a) as being un-patentable over Farris in views of Gerszberg and Cheng et al., U.S. 2002/0187746 (referred to hereinafter as “Cheng”).

Applicant respectfully traverses these rejections, at least because the cited references taken individually or in any reasonable combination do not disclose or suggest all claim limitations of each pending claim for at least the following reasons.

#### **I. CLAIMS ALLOWABLE IN VIEW OF CITED REFERENCES' DEFICIENCIES**

Prior to the current amendment, all pending claims read on Applicant's Fig. 8, the embodiment requiring three separate network interface units (NIU's). Accordingly, because of admitted deficiencies relative to a three NIU embodiment in the various principal references (Farris, Cardina and Knight), the Examiner cited Gerszberg because it shows a relaying of wireless communication via an intermediary transceiver, in an effort to read each principal reference in combination with Gerszberg on Applicant's claims. Thus, all section 103 rejections in the Office Action rely on Gerszberg to teach a relaying of wireless communication through an intermediary transceiver.

However, at least in view of the current claim amendments, Gerszberg (as well as all other cited references, discussed below) remains deficient at least because it does not disclose or suggest that its relay transceiver 2503 (Gerszberg, Fig. 25) interfaces with a subscriber network.<sup>2</sup> The only arguable subscriber network shown in Gerszberg is

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<sup>2</sup> In addition to the arguments presented herein, Applicant maintains that the arguments previously presented against Gerszberg are valid and meritorious, that the claims should have been allowed based on such previous arguments and their accompanying amendments. Applicant's further amendments herein, although unnecessary in Applicant's view, are made to advance the prosecution of this application.

identified by ISD22/IRG22-1 representing Intelligent Services Director/Integrated Residence Gateway. (Gerszberg, Fig. 25; col. 4, line 46 and col. 3, line 4)

In Gerszberg, Fig. 25, only wireless communication station 2502 can be viewed as arguably interfacing with subscriber network ISD22/IRG22-1. Wireless transceiver 2503 is “placed at tap 60” (Gerszberg, col. 33, line 52) which is not the disclosed subscriber network nor any other subscriber network, but is part of the network service provider’s upstream infrastructure. The tap lies on the upstream side of cable 30 which, in turn, is on the upstream side of protector block 26. (Gerszberg, Figs. 1A and 25) Notably, protector block 26 is the line of demarcation between the upstream infrastructure and the “premises.” (Gerszberg, col. 17, lines 10-12; col. 14, lines 20-21) Thus the transceiver at wireless communication station 2503 is not interfacing with a subscriber network within subscriber premises, but is connected to upstream infrastructure.

Completing the Gerszberg transceiver picture, wireless transceiver 2501 is hardwired to C-FMP 32-1 (Cable Facilities Management Platform) located at the network service provider’s central office. (Gerszberg, Fig. 25; col. 5, lines 7-8) Thus, wireless transceiver 2501 also does not interface with a subscriber network within subscriber premises.

However, all of Applicant’s pending claims now call for transceivers (plural), each of which interfaces with, respectively, its own subscriber network. Applicant submits that Gerszberg, which shows no more than one such transceiver, is not an effective reference against Applicants’ claims for at least this reason. In addition,

Applicant maintains that Gerszberg is not an effective reference for reasons previously given in previous responses.

Furthermore, all of the other cited references do not cure this deficiency in Gerszberg. For example, consider the principal references Farris, Cardina and Knight.<sup>3</sup>

Farris: In addition to the deficiencies of Farris admitted in the Office Action (e.g., Office Action, pg. 4), Farris shows no more than a wireless connection from SNID 19 at customer premises to network services provider's base station 29 (Farris, Fig. 1), which shows no more than Gerszberg, and thus does not cure this deficiency in Gerszberg.

Cardina: Similarly, in addition to the deficiencies of Cardina admitted in the Office Action (e.g., Office Action, pgs 14-15), Cardina's Fig. 1 shows no more than a wireless connection from customer premises 104 to mobile telephone switching office 110 (MTSO 110) which, again, does not cure this deficiency in Gerszberg.

Knight: In addition to the deficiencies of Knight admitted in the Office Action (e.g., Office Action, pg 23), Knight shows the relaying of cellular communication through company service provider infrastructure cell sites 101/119 by way of the company's microwave hookup 109/113/116, and not via customer premises subscriber networks. Customer premises subscriber networks might arguably be associated with cellular telephone users 106, 107, 125, 126. (Knight, Fig. 1) But, those users are clearly not involved in the relaying of cellular communication. Thus, Knight does not show even

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3. The other applied references: Ehreth, McKenna, Sawada, Patron and Cheng, cited for reasons unrelated to this deficiency, also do not cure this deficiency of Gerszberg.

one transceiver interfacing with one subscriber network which is used in the manner recited in Applicant's claims. Thus, Knight does not cure this deficiency in Gerszberg.

With respect to Applicant's new independent claims, claim 44 reads on Applicant's Fig. 8, the three-NIU embodiment while independent claims 37, 51, 52 and 55 read on Applicant's Fig. 6, the two NIU embodiment. Applicant believes that it is entitled to claims directed to a two NIU embodiment as well as a three NIU embodiment. Indeed, not only do the applied references not show three transceivers respectively associated with three subscriber networks, the references taken individually or in any combination do not show even two transceivers respectively associated with two subscriber networks. In other words, the intermediate hop through an intermediate NIU's transceiver is not required to avoid reading the pending claims on any combination of the cited prior art. With this background in mind, consider each independent claim.

## **II. Independent Claim 1:**

Claim 1 is rejected under 35 U.S.C. §103(a) as allegedly being un-patentable over Farris in view of Gerszberg. Claim 1 reads on Applicant's Fig. 8.<sup>4</sup> For reasons given above, neither Farris nor Gerszberg taken individually or in any reasonable combination disclose or suggest:

"wherein the wireless transceiver is configured to relay data from another wireless transceiver interfacing with another subscriber network that has lost said connectivity to the wireline network due to a problem in a residence or place of business of a network subscriber associated with said another subscriber network, said another wireless transceiver being connected to said wireless transceiver through no more than one other wireless transceiver interfacing with one other subscriber network that has also lost said connectivity to the wireline network

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<sup>4</sup> Claim 1 reads on Applicant's Fig. 8 which shows three wireless subscribers or three network interface units (NIU's) identified as B, C and D. The wireless transceiver for subscriber B (right-hand side of Fig.) is the recited "wireless transceiver." The wireless transceiver for subscriber D (left-hand side of Fig.) is the recited "another wireless transceiver." The wireless transceiver for subscriber C (center of Fig.) is the recited "no more than one other wireless transceiver."

when said data is being relayed, said another and said one other wireless transceivers having been wireline-connected to the wireline network during normal operation.”

(Emphasis added) Neither Farris nor Gerszberg discloses or suggests at least Applicant’s wireless transceivers interfacing with subscriber networks as recited, for reasons given above. Therefore, the 35 U.S.C. §103(a) rejection of claim 1 should be withdrawn and the claim allowed.

Dependent claims 3 and 5-9, dependent from claim 1, are allowable at least for reasons based on their respective dependencies from allowable claim 1.

### **III. Independent Claim 10:**

Claim 10 is rejected under 35 U.S.C. §103(a) as allegedly being un-patentable over Cardina in view of Gerszberg. Claim 10 also reads on Applicant’s Fig. 8. Claim 10 recites, *inter alia*:

“(a) providing wireless-connectivity directly between a first transceiver associated and interfacing with said first subscriber network of said network subscriber and a second transceiver associated and interfacing with a second subscriber network of a network subscriber other than said one said more than one other network subscriber, and

(b) providing wireless connectivity directly between said second transceiver and a third transceiver associated and interfacing with a third subscriber network of said one said more than one other network subscriber” (claim 10, emphasis added)

Cardina and Gerszberg, taken individually or in any reasonable combination do not disclose or suggest at least Applicant’s recited transceivers which interface with their respective subscriber networks, for reasons given above. Therefore, the 35 U.S.C. §103(a) rejection of claim 10 should be withdrawn and the claim allowed.

Dependent claims 13-17, dependent from claim 10, are allowable at least for reasons based on their respective dependencies from allowable claim 10.

**IV. Independent Claim 18:**

Claim 18 is rejected under 35 U.S.C. §103(a) as allegedly being un-patentable over Cardina in view of Gerszberg. Claim 18 also reads on Applicant's Fig. 8. Claim 18 recites, *inter alia*:

"providing backup network connectivity to said one subscriber network for a network subscriber having a residence or place of business, said backup connectivity being provided when said wireline connectivity for said one node is lost due to a problem in said residence or said place of business via a wireless network by wirelessly relaying data directly from a first transceiver associated and interfacing with said one subscriber network to a second transceiver associated and interfacing with another subscriber network in the plurality of subscriber networks which had an active wireline connection to the network service provider, said second transceiver being wirelessly connected directly to a third transceiver associated and interfacing with yet another subscriber network in the plurality of subscriber networks that has an active wireline connection to the network service provider." (claim 18, emphasis added)

Cardina and Gerszberg, taken individually, or in any reasonable combination, do not disclose or suggest at least this limitation for reasons that are the same as, or similar to, those given above for allowability of claim 10. For at least these reasons, Applicant requests that the 35 U.S.C. § 103(a) rejection of claim 18 be withdrawn and the claim allowed.

Dependent claims 22-27, dependent from claim 18, are allowable at least for reasons based on their respective dependencies from allowable claim 18.

**V. Independent Claim 28:**

Claim 28 is rejected under 35 U.S.C. §103(a) as allegedly being un-patentable over Farris in view of Gerszberg. Claim 28 also reads on Applicant's Fig. 8. Claim 28 recites, *inter alia*:

"wherein the wireless transceiver interfacing with its respective subscriber network is configured to relay data directly from another wireless transceiver in



another NIU interfacing with its respective another subscriber network to which its respective one of said wireline connections has failed, the another wireless transceiver relaying said data directly from yet another wireless transceiver in yet another NIU interfacing with its respective yet another subscriber network that is wireline-connected to the wireline network.” (claim 28, emphasis added)

Farris and Gerszberg, taken individually, or in any reasonable combination, do not disclose or suggest at least this limitation for reasons that are the same as, or similar to, those given above for allowability of claim 1. For at least these reasons, Applicant requests that the 35 U.S.C. § 103(a) rejection of claim 28 be withdrawn and the claim allowed.

Dependent claims 29-32 and 36, dependent from claim 28, are allowable at least for reasons based on their respective dependencies from allowable claim 28.

#### **VI. Independent Claim 34:**

Claim 34 is rejected under 35 U.S.C. §103(a) as allegedly being un-patentable over Knight in view of Gerszberg. Claim 34 also reads on Applicant’s Fig. 8. Claim 34 recites, *inter alia*:

“providing, when said first wireline communication fails due to a problem inside premises of said first network subscriber, substitute wireline communication for said first network subscriber by way of said second wireline communication by wirelessly relaying data indirectly between two nodes through a third node associated with a third network subscriber with failed wireline communication, one of said two nodes located in said first subscriber network on said premises of said first network subscriber and the other of said two nodes located in said second subscriber network on premises of said second network subscriber, said other of said two nodes relaying said data with said network service provider over a wireline otherwise normally carrying only said second wireline communication, said one node having a first transceiver interfacing with said first subscriber network, said other node having a second transceiver interfacing with said second subscriber network and said third node having a third transceiver interfacing with its respective third subscriber network, wherein said wirelessly relaying data includes said first transceiver wirelessly communicating directly with said third

transceiver and said third transceiver wirelessly communicating directly with said second transceiver.” (claim 34, emphasis added)

Knight and Gerszberg, taken individually, or in any reasonable combination, do not disclose or suggest at least this limitation for reasons given above. Indeed, Knight does not teach any transceivers interfacing with subscriber networks in its disclosure, and Gerszberg does not teach more than one transceiver interfacing with a subscriber network in its disclosure. For at least these reasons, Applicant respectfully requests that the 35 U.S.C. § 103(a) rejection of claim 34 be withdrawn and the claim allowed.

#### **VII: New Independent Claim 37:**

Claim 37 reads on Applicant’s Fig. 6. Claim 37 recites, *inter alia*:

“a first wireline connection to a first subscriber location having a first subscriber network; a first network interface unit (NIU) at the first subscriber location, the first NIU including: a first wireless transceiver; and.....a second wireline connection to a second subscriber location having a second subscriber network, wherein the second subscriber location is remote from the first subscriber location; and a second NIU at the second subscriber location, the second NIU including: a second wireless transceiver”

None of the cited references, taken individually or in any reasonable combination, disclose or suggest Applicant’s recited subject matter as highlighted above, much less when taken in the full context of claim 37. None of the references show or imply two different wirelessly-linked transceivers, each associated, respectively, with one of two subscriber networks. For at least these reasons, claim 37 is allowable over the cited references.

Dependent claims 38-43, dependent from claim 37, are allowable at least for reasons based on their respective dependencies from allowable claim 37.

**VIII: New Independent Claim 44:**

Claim 44 reads on Applicant's Fig. 8. Claim 44 recites, *inter alia*:

"a first wireline connection to a first subscriber location having a first subscriber network; a first network interface unit (NIU) at the first subscriber location, the first NIU including: a first wireless transceiver; and.....a second wireline connection to a second subscriber location having a second subscriber network, wherein the second subscriber location is remote from the first subscriber location; a second NIU at the second subscriber location, the second NIU including: a second wireless transceiver; and.....a third wireline connection to a third subscriber location having a third subscriber network, wherein the third subscriber location is remote from both the first subscriber location and the second subscriber location; a third NIU at the third subscriber location, the third NIU including: a third wireless transceiver."

None of the cited references, taken individually or in any reasonable combination, disclose or suggest Applicant's recited subject matter as highlighted above, much less when taken in the full context of claim 44. None of the references show or imply three different wirelessly-linked transceivers, each associated, respectively, with one of three subscriber networks. For at least these reasons, claim 44 is allowable over the cited references.

Dependent claims 45-50, dependent from claim 44, are allowable at least for reasons based on their respective dependencies from allowable claim 44.

**IX: New Independent Claim 51:**

Claim 51 is a method claim which tracks the language of claim 37 and is allowable for reasons that are the same as or similar to those given for allowability of claim 37.

**X: New Independent Claim 52:**

Claim 52 reads on Applicant's Fig. 6. Claim 52 recites, *inter alia*:

"a plurality of network interface units serviced by a network service provider, each one of said units interfacing with its respective subscriber network, said each one of said units including a wireless transceiver configured to wirelessly communicate with other of said units, said each one of said units being normally wireline-connected to said service provider via a switch in said unit" (claim 52, emphasis added)

None of the cited references, taken individually or in any reasonable combination, disclose or suggest Applicant's recited subject matter as highlighted above, much less when taken in the full context of claim 52. None of the references show or imply more than one network interface unit interfacing with its respective subscriber network, much less show or imply that in the full context of claim 52. For at least these reasons, claim 52 is allowable over the cited references.

Dependent claims 53-54, dependent from claim 52, are allowable at least for reasons based on their respective dependencies from allowable claim 52.

**XI: New Independent Claim 55:**

Claim 55 is a method claim which tracks the language of claim 52 and is allowable for reasons that are the same as or similar to those given for allowability of claim 52.

### **CONCLUSION**

Reconsideration and allowance of the pending claims are respectfully requested. It is respectfully submitted that all claims and, therefore, this application are in condition for allowance and prompt passage to issue is respectfully requested.<sup>5</sup>

To the extent necessary, a petition for extension of time under 37 C.F.R. § 1.136 is hereby made, the fee for which should be charged to deposit account number 07-2347. Please charge any other fees due, or credit any overpayment made to that account.

Respectfully submitted,

Date: **October 7, 2010**

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<sup>5</sup> As Applicant's remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicant's silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references, assertions as to dependent claims, etc.) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such assertions/requirements in the future.